Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	
Universal Service	)	

COMMENTS OF JOHN STAURULAKIS, INC.

August 6, 2004

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Summary

JSI recognizes the efforts of the members of the Joint Board in submitting its recommendations on ETC designations and the scope of support. JSI urges the Commission to require mandatory minimum guidelines for ETC designations conducted by state commissions. JSI encourages the Commission to establish sound public interest guidelines that are meaningful in the context of the purposes of the Act and acknowledge the considerations Congress gave to areas served by rural telephone companies.

JSI urges the Commission to reject the Joint Board's primary line recommendation as well as its CETC cap per line proposal. The conditional primary line recommendation has been or will be shown by various commenters, including JSI, to be administratively unworkable given the multi-carrier complexities involved. The CETC cap on a per-line proposal has multiple problems mentioned herein that suggest the Commission defer a clear basis-of-support recommendation until the Joint Board addresses its most recent Commission referral.

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Pursuant to Federal Communications Commission ("FCC" or "Commission") Rules 1.415 and 1.419,[1] John Staurulakis, Inc. ("JSI") hereby provides its comments to the FCC's Notice of Proposed Rulemaking ("NPRM") in the above captioned proceeding.[2] In this proceeding the Commission has announced that it seeks comment on whether the Federal-State Joint Board on Universal Service ("Joint Board") recent recommendations[3] "should be adopted, in whole or in part, in order to preserve and advance universal service, maintain competitive neutrality, and ensure long-term sustainability of the universal service fund."[4]

JSI is a consulting firm offering regulatory and financial services to more than two hundred incumbent local exchange carriers ("ILECs") throughout the United States.

[1] 47 CFR §§1.415 & 1.419.

[2] *See In the Matter of Federal-State Joint Board on Universal Service: Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004), Fed Reg. Vol. 69, No. 129, 40839 ("NPRM").

[3] *See In the Matter of Federal-State Joint Board on Universal Service: Recommended Decision*, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) ("Recommended Decision").

[4] NPRM at para. 1.

Among its consulting services, JSI assists these ILECs in the preparation and submission of jurisdictional cost studies and Universal Service Fund data to the National Exchange Carrier Association, and routinely prepares and files tariffs with the Commission on behalf of a number of these ILECs. JSI also provides consulting services for competitive local exchange carriers, or “CLECs,” that provide competitive local exchange services across the nation.

I. ETC Designation Process

The Commission’s NPRM seeks comment on several matters related to federal universal service. Foremost is the process for designation of eligible telecommunications carriers (“ETCs”). The Joint Board recommends that the Commission adopt permissive federal guidelines meant to encourage state commissions to consider certain additional minimum guidelines, in addition to those specified by statute.[5] The Joint Board recommended that the Commission apply these permissive federal guidelines in all of its own ETC proceedings as well. The Joint Board also recommended that state commissions use a higher level of scrutiny for ETC applications seeking designation in areas served by rural carriers. In another matter related to ETC designation, the Joint Board recommended that the Commission encourage state commissions to use the annual certification process for all ETCs to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs.

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5 *See* 47 U.S.C. § 214(e).

A. JSI Urges Adoption of Mandatory Minimum Guidelines for State Commissions

JSI believes the Joint Board was too timid in making its recommendation regarding the ETC designation process. Specifically, JSI urges the Commission to adopt mandatory minimum federal guidelines that must be used by the state commissions in ETC designation proceedings. JSI believes recommending a permissive guideline fails to foster a uniform application of ETC designations throughout the states. Evidence shows that many, if not most, state commissions are hesitant to deny ETC designation to competitive carriers because they perceive that granting designations will allow more federal support to flow into their state. The current situation is analogous to the famous example in economic literature known as the "Tragedy of the Commons."[6] Overgrazing of the New England commons occurred because no individual considered the cumulative impact of his or her action. Today, JSI hears states claim they are not the "warden of the commons."[7] Thus their particular interest is to allow "overgrazing" for their subjects on federal universal service support. Inasmuch as the incumbent wireline carriers' federal universal service support is closely monitored and controlled through the federal programs, state subjects currently overgrazing are competitive ETCs.[8] JSI submits this Commission is responsible for the administration of federal universal service funds and it

6 *E.g., see* G. Hardin, "The Tragedy of the Commons," Science, 1968, pp. 1243-47.

7 *See* Testimony of Lawrence Lackey, Vermont Department of Public Service, Filed July 14, 2004, Petition of RCC Atlantic Inc. for designation as an Eligible Telecommunications Carrier in areas served by rural telephone companies under the Telecommunications Act of 1996, State of Vermont Public Service Board, Docket No. 6934, page 15.

8 This fact has been recognized by the Joint Board: "Continued support of multiple connections for multiple networks in rural and high-cost areas threatens fund sustainability." Recommend Decision at 67.

is appropriate it require mandatory minimum guidelines for states to follow in their ETC designation proceedings.[9]

B. JSI Encourages the Commission to Establish Sound Public Interest Guidelines

The Joint Board recommends that state commissions use a higher level of scrutiny for ETC applicants seeking designation in areas served by rural carriers. The Joint Board noted that the public interest analysis should be consistent with the purposes and goals of the Act itself.

JSI encourages the Commission to provide further guidance and direction on the public interest standard recommendations. Specifically, JSI urges the Commission to provide an understanding of the purposes and goals of the Act that is consistent with the specific language contained within the Act addressing areas served by rural carriers. All too often competitive carriers allege that the purposes of the Act can be found exclusively in the Preamble of the Act. JSI respectfully disagrees. There are numerous instances where the concern of competition and its effects on areas that were too small for Ma Bell to worry about are voiced with specificity by Congress.[10] It is therefore prudent for the Commission to acknowledge the economic realities faced in areas served by rural carriers and adopt public interest standards consistent with purposes of the Act related to these areas. Economic literature exploring the reality of a natural monopoly has long acknowledged the economic situation realized in many areas served by rural carriers.[11] This literature served as a partial foundation for the specific provisions in the Act

[9] *See, e.g.*, 47 U.S.C. § 214(e)(1) ("[a] common carrier designated as an eligible telecommunications carrier under paragraph (2), (3) or (6) shall be eligible to receive universal service support in accordance with Section 254").

[10] *See e.g.*, 47 USC §§ 214(e)(2), 214(e)(6), 251(f)(1), 251(f)(2), and 253(f).

[11] *See* Sharkey, William W., The Theory of Natural Monopoly, Cambridge University Press, 1982.

addressing areas served by rural carriers. Any public interest standard or standards must acknowledge these circumstances.[12]

The public interest standard for areas served by rural carriers should address the fundamental question: Is it in the federal public interest to support more than one network in areas currently served by rural carriers? If the response to this question is always yes, then JSI submits that the respondent has not properly applied the intent of Congress in forming his response because it is clear Congress had thought about instances where the response to this question would be no. JSI urges the Commission to give the industry specific mandatory guidance on what it considers the federal public interest that does not result in a positive response in every circumstance. When this question was presented to the Utah Public Service Commission in dealing with a state-funded universal service program, the Commission decided that providing additional funding for an existing wireless customer base did not provide a compelling public benefit. The commission denied ETC designation to an applicant on these grounds.[13] Two other examples of how states are addressing the public policy requirement in ETC petitions are found in Louisiana and Indiana. The Louisiana Public Service Commission recently adopted a set of public interest criteria to be applied to all requests for ETC designation in areas served by rural telephone companies.[14] JSI believes Louisiana's approach is an advance toward addressing the federal public interest question posed above. The Indiana Utility Regulatory Commission recently denied a CETC petition in

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12 This literature concludes that in areas of a natural monopoly, the economic situation faced by providers of a good or service in a market is such that it is more costly for two providers in a particular market than it would be for one provider to provide the good or service in that market.

13 WWC Holding Co., Inc. v. Public Serv. Comm'n of Utah, 44 P.3d 714, 721 (Utah, 2002).

14 Louisiana Public Service Commission, General Order, Docket No. R-27841, May 12, 2004.

rural areas largely on the public interest consideration. The Indiana Commission determined that a wireless carrier petition failed to advance the public interest in rural areas.[15] These three cases demonstrate a willingness of some state commissions to responsibly address their duty to review the public interest for rural areas. Lamentably, in most ETC designation proceedings, state commissions often do not have a coherent public interest policy by which to judge a petition. Since this situation is the norm rather than the exception, JSI believes it is important for the Commission to oversee all state commission applications, by providing specific mandatory federal guidance for the ETC designation process applied by state commissions. This oversight must include minimum mandatory guidelines and clear public interest standards for states to apply. Otherwise, the "widespread uncertainty regarding the appropriate standards for determining whether the designation of a [CETC] serves the public interest"[16] will remain.

II. Scope of Support

The second matter raised by the Joint Board involves the scope of federal universal service support. The Joint Board recommends that the Commission limit the provision of high-cost support (all high-cost programs administered by USAC) to a single connection that provides a subscriber access to the public telephone network. The Commission seeks comments on how it may adopt this recommendation while not "creating undue administrative burdens." To minimize the effect of a primary line designation, the Commission seeks comment on restating, or "rebasing", the total high-

[15] Indiana Utility Regulatory Commission, Centennial Cellular Tri-State Operating Partnership, Cause No. 41052-ETC 45, March 17, 2004.

[16] Recommended Decision, Separate Statement of Kathleen Q. Abernathy.

cost support flowing to a rural carrier's study area, and on other possible measures including "lump sum" and "hold harmless" proposals. In conjunction with these proposals limiting the scope of support to a primary connection, the Joint Board recommends that high-cost support in areas served by rural carriers be capped on a "per-line basis when a competitive carrier is designated as an ETC and be adjusted annually by an index factor."[17]

The Joint Board also recommended that the Commission further develop the record on how best to implement support for primary connections, including consideration of proposals to allow consumers with more than one connection to designate an ETC's service as "primary" and rate issues associated with supporting primary connections.

The Joint Board recommended that the Commission seek comment on the potential impact of its primary connection proposal on investment in rural areas and consider adoption of transitional measures for support in areas served by more competitive ETCs ("CETCs").

JSI believes that the Joint Board recommendations regarding the scope of support will be disruptive to areas served by rural carriers, administratively unworkable and fails to accomplish the purposes of Universal Service.

A. Federal Support Should Apply to Networks Not Connections

JSI respectfully submits that the Joint Board recommendations deviate from a core principle that federal support is for networks not connections. The issues addressed by the Joint Board lead to recommendations that stray from the current problem: How to best address the threat imposed on the fund by the support of multiple connections for

[17] Recommended Decision at 56.

multiple networks.[18] The Joint Board concluded that the dramatic increase of support for CETCs is for "wireless connections that supplement, rather than replace, wireline service." Clearly the Joint Board's concern is whether it is appropriate for the federal programs to support more than one network in areas served by rural carriers – networks that are "prepared to serve all customers within the designated service area."[19] If it is federal policy to support more than one network "prepared to serve all customers," then the support should be appropriately based on the specific cost of each the networks. If it is not federal policy to support duplicate networks, then the method of stemming the threat of the sustainability of the fund is to stop the designation of CETCs in areas served by rural carriers. The current situation is vexing. The primary ETC serving an area receives support for actual expenditures that supports the infrastructure and maintenance of a nearly ubiquitous network. The CETC, rather than receiving support for actual expenditures, receives support based on costs that have no relation to the network it uses to provide service. The Commission's most recent referral to the Joint Board attempts to address this problem;[20] however, in its Recommended Decision,, the Joint Board has attempted to place a small band-aid on a severe wound it believes "threatens fund sustainability." JSI believes that this approach is not appropriate nor will it be effective. JSI recommends the Commission reject the proposed solution to the current scope of support problem as one that does not solve the specific problem and in fact creates other

[18] *See* Recommended Decision at 67.

[19] *See* Recommended Decision at 9. Elsewhere the Joint Board states that "only fully qualified carriers that are capable of, and committed to, providing universal service would be able to receive support." Recommended Decision at 2.

[20] Federal Communications Commission, In the Matter of Federal-State Joint Board on Universal Service, Order, FCC 04-125, Rel. Jun. 28, 2004 ("Order").

problems. In a word, the Joint Board recommendation on the scope of support lacks "solvency" and should be rejected.

B. The Joint Board Recommendation is Contingent on the Ability to Develop a Workable Primary Connection Rule

JSI notes that the Joint Board Recommendation is contingent on the Commission's ability to develop a workable rule for primary connections. The Joint Board offered no specific set of rules to guide this Commission; and disappointingly, this Commission has offered no set of rules for which parties may comment. Therefore, commenters in this proceeding are supposed to comment on a rule that does not exist. There are significant administrative barriers for small and rural carriers in the various forms of a primary connection policy. JSI believes the Commission should determine there is still no workable rule for primary connections in areas served by rural telephone companies.[21]

JSI urges the Commission to reject the claim by NASUCA that the current process identifying primary lines for Lifeline support parallels what is proposed by the Joint Board.[22] The concept is far more complex because of the volume of customers involved – all customers – rather than a small group of Lifeline participants, and because

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[21] The Commission made a similar determination in 1997, when it concluded: "At this time, we tentatively conclude to eliminate several options because they would be too administratively burdensome. The proposals we tentatively reject include: creating and maintaining a national database of primary line designations; using local property records to identify and track primary lines; and using social security numbers to track primary lines." *Defining Primary Lines, Notice of Proposed Rulemaking*, CC Docket No. 97-181, 12 FCC Rcd 13647 (1997), at para. 33.

[22] Recommended Decision at note 224 ("NASUCA Comments at 7 (asserting that LECs are currently required to distinguish between primary and other lines for assessing subscriber line charges (SLCs) and allowing Lifeline support, and noting that '[w]hen equal access and intraLATA presubscription began, every customer had to make new choices that were more complicated than a selection of what firm provides the primary line.'"). JSI notes NASUCA's claim that rural carriers need to identify second-line residential lines for SLCs is not factually correct – this requirement does not exist.

of the complexity of multiple carriers serving an individual. NASUCA's recommendation does not appear to address these facts when supporting primary line designations.

C. Scope of Support Proposal is a Reactionary Response to Regulatory Failures.

JSI believes the primary connection proposal is an attempt to solve the real and pressing problems raised by designating a second ETC in areas served by rural telephone companies. For all intents and purposes, the Joint Board's scope of support recommendations are akin to placing a rickety ambulance at the bottom of the proverbial cliff to carry away those persons falling from the top. The more effective action would be to place a guardrail or fence at the top of the cliff. This fence is a set of strong mandatory minimum designation standards and a clearly defined public interest standard that must be used by all state commissions. Without the guard rail at the top of the fence, the ambulance, or a fleet of ambulances, will fail to keep up with demand. Establishing a primary connection requirement is similar to a form of triage where only one passenger is allowed to ride the ambulance. JSI urges the Commission to reject this approach and concentrate on safeguarding the sustainability of the program without causing additional problems.

D. Scope of Support Cap will Cause Serious Problems for Rural Telephone Companies.

In addition to the primary connection proposal with its possible hold harmless provisions, the Joint Board recommended when a second ETC is designated in a rural service area that "high-cost support in areas served by rural carriers be capped on a per-line basis … and adjusted annually be an index factor."[23] JSI strongly recommends the Commission reject this CETC cap for the following reasons.

The CETC cap has the effect of defeating the hold harmless provisions put forth by the Joint Board. Thus, it appears to be inconsistent with the Joint Board's concerns voiced in a prior section of the recommendation.

The CETC cap would have the effect of decoupling the base of support for the current mechanisms. Instead of receiving support based on actual expenditures for infrastructure and maintenance, support for a capped rural telephone company would be based on a baseline year adjusted annually for inflation. This decoupling of support will create uncertainty for future infrastructure projects because uncapped rural telephone companies will not know, when they start a multi-year infrastructure project that is supported by the fund, whether the CETC cap will become effective and thus forestall their planned investment recovery plan.

Furthermore, the CETC cap appears to address the base of support for rural telephone companies – a topic recently referred to the Joint Board for review.[24] The CETC cap would prejudge that current proceeding and should not be adopted by the Commission in this proceeding.

The apparent problem with the CETC cap is that it is clearly a base-of-support recommendation that should be examined in the context of how CETCs should receive support from the federal universal service funds. JSI believes that the recommendation is a poorly conceived recommendation that should be rejected until the base-of-support proceeding is concluded.

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[23] Recommended Decision at 56.

[24] *See* Order.

In addition, the CETC cap will have implications to rate-of-return mechanics and current national pooling mechanisms for which the pool administrator, NECA, should be sought for comment in this proceeding.

Lastly, imposition of a CETC cap is unnecessary due to the existing cap on the high cost loop fund that was implemented in order to keep annual growth in the total amount of high cost loop support available for payment to rural carriers limited to the annual increase in the rural growth factor index. Based on the third quarter 2004 high cost fund projections made by USAC, the high cost loop fund represents approximately 44 percent of the dollars that make up the three rural carrier high cost support mechanisms: HCLS, LSS and ICLS. Accordingly, imposition of an additional capping mechanism at this time is unnecessary and will not have the desired results, and JSI urges the FCC to reject implementation of a CETC cap as recommended by the Joint Board.

III. Conclusion

JSI recognizes the efforts of the members of the Joint Board in submitting its recommendations on ETC designations and the scope of support. JSI urges the Commission to require mandatory minimum guidelines for ETC designations conducted by state commissions. JSI encourages the Commission to establish sound public interest guidelines that are meaningful in the context of the purposes of the Act and acknowledge the considerations Congress gave to areas served by rural telephone companies.

JSI urges the Commission to reject the Joint Board’s primary line recommendation as well as its CETC cap per line proposal. The conditional primary line recommendation has been or will be shown by various commenters, including JSI, to be administratively unworkable given the multi-carrier complexities involved. The CETC cap on a per-line proposal has multiple problems mentioned herein that suggest the Commission defer a clear basis-of-support recommendation until the Joint Board addresses its most recent Commission referral.

Respectfully submitted,

August 6, 2004 John Staurulakis, Inc.

By: /s/ Manny Staurulakis

Manny Staurulakis
President
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, Maryland 20706
301-459-7590